

Decision-Making and Firearm Removal Legislation  
on Civil Domestic Violence Protection Orders in Arizona

by

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## ABSTRACT

Rates of domestic violence (DV) gun homicide in Arizona consistently exceed the national average (Everytown, 2015). For perpetrators, firearms continue to be their primary weapon of choice in DV homicides (Arizona Coalition to End Sexual and Domestic Violence, 2015). In Arizona, civil DV protection orders (POs) help reduce the growing rates of gun homicide through firearm removal provisions. Questioning how firearms shape judicial decision-making, this thesis contributes to existing literature on firearms and DV by exploring how judges come to interpret findings of credible threat and which factors are associated with judicial decisions to grant firearm removal pursuant to Ariz. Rev. Stat. § 13-3601. This thesis reveals how courts navigate competing concerns around victim safety and gun rights.

Secondary qualitative and quantitative data collected as part of Dr. Alesha Durfee's National Institute of Justice Researcher-Practitioner Partnerships Grant "Investigating the Impacts of Institutional and Contextual Factors on Protection Order Decision-Making" (Dr. Alesha Durfee, PI; Mesa Municipal Court and National Center for State Courts, co-PIs) (2015-IJ-CX-0013) are analyzed in this thesis.

## DEDICATION

It is with great honor that I dedicate my thesis to my loved ones. Above all else, my mother strengthens my passion for social justice and encourages the continued pursuit of my education. I am deeply indebted to the many sacrifices she made which have provided me with the privileges I have today.

To my friend Brandon, I thank you for being there for me throughout the Master's program. The unwavering support and encouragement Brandon provided allowed for my continued success and academic growth.

To all my friends and family who have taken interest in my work, through editing drafts to simply inquiring, I thank you for your love and interest. Without my family and friends, I would not be the person I am today, and I thank you all for being a part of my journey.

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I want to extend my gratitude to Dr. Alesha Durfee and the research-practitioner partners on her NIJ grant. To Mr. Paul Thomas, the Court Administrator at Mesa Municipal Court, your continued dedication to ensuring the courts best meet the needs of the people they serve inspires my own work, and it has been a sincere pleasure getting to know you. Dr. Brenda Uekert, the Principal Court Research Consultant at the National Center for State Courts, your work inspires me to study limited jurisdiction courts and focus on the everyday interactions which shape these institutions. To all three partners, I am deeply appreciative.

Finally, to the Women and Gender Studies department at Arizona State University, I thank you for allowing my intellectual growth as both a feminist and a scholar.

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## INTRODUCTION

On July 14, 2015, Shayley Estes had an order of protection served against Igor Zubko (Cockerman, 2017). Ten days later, her roommate found her dead, with a handgun and shell casings on the floor (Corey and Mitchell, 2015). Before her death, the two had been in a relationship and cohabitating in Estes's apartment (Corey and Mitchell, 2015). According to an AZCentral article on the incident, Estes received multiple threatening text messages after their break up, leading her to take out a protection order (Corey and Mitchell, 2015). The next day, Zubko bought a gun online, violating the protection order and entering her apartment while she was gone (Corey and Mitchell, 2015). When she came home, the two had an argument, when Estes attempted to leave, Zubko shot her multiple times (Corey and Mitchell, 2015). At 22-years-old, Estes had a lot of life to live and trusted a protection order to keep her safe.

Civil protection orders (POs) provide a means of protection from the threat of bodily harm and allow for the potential removal of firearms. When it comes to this firearm removal, there is a debate between the right to safety and the right to firearms. We construct narratives around which bodies are deemed worthy of protecting from Domestic Violence (DV) firearm violence and from whom they need protecting. The right to bear arms is not universal, and the Second Amendment functions to uphold white privilege (Cramer, 1993). It has historically been "an essentially racialized right given to white people to insure their domination" (Brenda Plummer as cited in Lipsitz, 1998). One's right to bear arms is not only rooted in racial exclusion; white women were prohibited from owning firearms until they began to take up arms in times of war, with their ability to own guns dependent on their willingness to uphold notions of nationalism,

reifying the patriarchal society and aiming at “other” (enemy) bodies. Gun laws in the United States were founded as a means of providing white men the legal grounds to take up arms while prohibiting women and men of color from doing so.

Despite the differential implementation of gun rights in the nation, conversations around victim safety are often silenced when it comes to the topic of firearms and DV. Within the United States, firearms are most frequently used against female intimates (Cooper and Smith, 2011), and access to firearms facilitates both fatal and non-fatal firearm violence (Catalano, 2013). Further, Sorenson and Schut (2016) reveal that nearly four and a half million women in the United States are threatened with a firearm in their lifetime, and one million become victims of firearm abuse. Though not all firearm owners commit acts of violence, homes with occurrences of intimate partner violence were more likely to be occupied by a handgun owner (Sorenson and Wiebe, 2004). Fifty-six percent of intimate partner homicide offenders had access to firearms (Glass et al., 2008), and firearm access increases the odds of a female being killed by a male offender fivefold (Campbell et al., 2003). While not all instances of firearm abuse are fatal, firearm assaults are twelve times more likely to result in death than incidents involving other weapons or bodily force (Saltzman et al., 1992). Additionally, owning a firearm increases the severity of abuse (McFarlane et al., 1998) and likelihood of firearm threats (Rothman et al., 2005).

According to the FBI, 342 DV homicides occurred in Arizona from 2003 to 2012. Of those, “61.4 percent of female DV homicide victims were killed with a gun” (Center for American Progress, 2014). Analyzing civil PO case files and judicial interviews from Dr. Alesha Durfee’s National Institute of Justice Researcher-Practitioner Partnerships

Grant (2015-IJ-CX-0013), I examine the relationship between gun culture and victim safety in the state of Arizona. The civil legal system operates under a great deal of judicial discretion, allowing judges to shape and determine whether to grant firearm removal. As a means of understanding how courts navigate competing concerns around protecting victims of domestic violence and preserving one's right to bear arms, I explore factors shaping judicial decision-making around firearm removal provisions on civil DV POs. Analyzing interviews with judges, I distinguish which factors contribute to their findings of "credible threat" and constitute the removal of firearms on civil DV POs in Arizona. Responses illustrate which types of violence and information shape judicial decisions around removal and when a firearm poses a "real and immediate, not conjectural or hypothetical" (436 F. Supp.2d 1204, D. Wyo. 2006) threat to the physical safety of the petitioner (Ariz. Rev. Stat § 13-3602 (G)(4)). Information obtained from this analysis contributes to the statistical models which then look at the second database composed of 1,388 civil DV PO case files from Arizona. Combined, I offer insight into the ways in which judges find firearms to pose a credible threat and illustrate how courts apply firearm removal legislation on civil DV protection orders while navigating competing concerns around victim safety and gun rights.

## LITERATURE REVIEW

Within the United States, the pervasiveness of gun supportive attitudes, coupled with easily accessible firearms, leads to lax gun control measures. With limited gun control legislation, civil DV protection orders offer a means of increasing victim-safety and allowing petitioners (people filing for an order or protection) to ask the judge to prohibit the respondent's possession of firearms (DeJong and Burgess-Proctor, 2006). Further, civil DV protection orders function to limit contact between a petitioner and a respondent (person an order of protection is filed against), and provide legal protection from the threat of bodily harm without the obligation of criminal charges (Dugan, 2003; Keilitz, 1994; Eigenberg et. al, 2003). Through the implementation of firearm removal legislation on civil DV protection orders, judges have the ultimate power in determining whether to limit one's right to firearms and operate under a great deal of judicial discretion (DeJong and Burgess-Proctor, 2006). In one of the few studies examining the relationship between firearm removal legislation on civil protection orders, Webster et al. (2010) found that 45 percent of petitioners requested firearm removal, and, of these 37 petitioners, only 49 percent had this request granted by a judge. Researchers doing work on firearms and DV civil POs must strive to understand this variation, as firearm removal provisions are associated with a reduction in overall rates of intimate partner homicide and intimate partner gun homicide (Vigdor and Mercy, 2003; 2006; Zeoli and Webster, 2010).

While civil DV POs have the potential to reduce the rates of DV homicide, the very act of seeking a protection order can place petitioners of all genders (Messing et al., 2014) at greater risk of injury, re-abuse, or homicide (Campbell et al., 2003). Further,

petitioners who request firearm removal risk future abuse and retaliation (Frattaroli and Teret, 2006). For many petitioners, the decision to seek an order of protection is prompted by incidences of extreme violence (Carlson et al., 1999; Harrell and Smith 1996). Messing et al. (2016) notes that experiences of stalking and extreme forms of intimate partner violence increase the likelihood that abused women will seek out orders of protection through the civil legal system. Given that petitioners filing for orders of protection are often doing so in the wake of extreme violence, it is vital to explore how their requests for firearm removal are taken up by the civil legal system and engaging in a discussion around the potential implications of inaction on the part of the courts.

Equally as important as understanding how courts handle requests for firearm removal is an awareness that not all individuals who have experienced firearm violence, or have grounds for firearm removal, will make this request. Importantly, many petitioners do not request firearm removal out of a fear that the respondent will retaliate should they ask a judge to limit the respondent's access to firearms (Wintemute et al., 2015; Vitti et al., 2013; Frattaroli and Teret, 2006). Frattaroli and Teret (2006) found that some petitioners deliberately avoid requesting firearm removal based on several factors, such as: viewing firearms as needed for home protection, fearing that requesting removal will lead to escalated violence, and knowing that firearms can be easily replaced given their availability (Frattaroli and Teret, 2006). Judges have the ultimate discretion in deciding whether to implement firearm removal, and petitioners may receive firearm removal on their granted order of protection even in the absence of a request.

While the civil legal system offers a means of protection from harm, not all are equally able to access the system. Historically, women of color have had to deal with

systematic discrimination and differential treatment when interacting with the legal system, which has led many women and other marginalized individuals to avoid seeking out legal mechanisms of protection when it comes to DV (Crenshaw, 1991). Research (Rennison and Welchans, 2000) indicates that Black women experience higher rates of victimization than White women, and Black women report these incidences to the police 67 percent of the time, as compared to 50 percent of white women (Rennison and Welchans, 2000). Messing et al. (2016) report a myriad of reasons that undocumented Latinas avoid formal legal systems, one such reason may be that women of color face racial discrimination and bias when interacting with the criminal justice system (Wan, 2000). While these forms of discrimination pose significant barriers to utilizing the legal system, Durfee and Messing (2012) also found evidence suggesting that individuals with higher levels of educational attainment are more easily able to navigate the protection order process. Further, Becker (2015) found that minorities who interacted with the protection order process reported feeling discouraged due to a lack of legal knowledge, thus impacting their overall ability to successfully obtain a protection order.

Of those individuals who access the legal system, prior studies reveal that not all petitioners are equally likely to receive an order of protection. Research on judicial decision-making has found the following factors tend to increase the likelihood of receiving an issued order of protection: the petitioner and respondent having been married (Gondolf, 1994), the petitioner being female (Muller et. al., 2009; Kingsnorth et al., 2013), the presence of threats and allegations of sexual violence, children having witnessed the abuse (Vittes and Sorenson, 2006), and the petitioner obtaining legal counsel (Durfee, 2009). Further, Durfee (2010) noted the importance the legal system

places on petitioners conforming to stereotypical accounts of victimization, with female petitioners more likely to convey the “utter fear they have experienced, as well as their powerlessness and learned helplessness” in their petitions (19). Importantly, claims of “fear” were nearly nonexistent when examining the ways in which male petitioners framed their claims of abuse (Durfee, 2011), illustrating that while judges may place importance on indications that petitioners are fearful of the respondents, women are not only more likely to express these concerns, they are expected to convey their “utter fear” and conform to societal perceptions around victimization (Durfee, 2010).

While the courts have placed expectations on the behaviors of petitioners, Lucken et al. (2014) found that factors reducing the likelihood of receiving an order of protection are centered around the “mitigating behaviors” of the respondent. Specifically, judges are less likely to grant or uphold an order of protection if the respondent is employed, contests the protection order at a hearing, filed for a protection order in the past, or has an attorney (Lucken et. al., 2014). In questioning whether allegations of firearms shape judicial decision-making, Vittes and Sorenson (2006) find that judges do not consider the severity of the abuse or having mentioned a firearm to be related a decision to grant or deny an order or protection. While this research offers a glimpse into the role firearms play in shaping judicial decision-making, little is known about which factors impact a judge’s decision to grant or deny specific requests for firearm removal.

### **Arizona**

In Arizona, firearms are easily accessible and loosely regulated. Arizona’s “Constitutional Carry” provision affords United States citizens over the age of 21 the “individual” right to bear arms free from permit, license, or registration requirements

(Ariz. Rev. Stat. § 13-3112). With some of the most permissive gun laws in the country, Arizona is consistently championed as the “Best State for Gun Owners” by Guns and Ammo Magazine (Wood, 2015). While some praise Arizona’s commitment to gun rights, others critique the state for facilitating firearm violence. Data compiled by Everytown for Gun Violence (2015) found that from 2009 to 2013, 105 people in Arizona were shot to death by an intimate partner, and that 89 percent of those victims were female. This same study revealed that Arizona’s rate of intimate partner gun homicide exceeds the national average by 45 percent (Everytown, 2015). The lethal intersection of firearms and DV in Arizona has remains consistent. Recent data reveals that of Arizona’s 107 DV homicides in 2015, 67 percent of victims died by gunshot (Arizona Coalition to End Sexual and Domestic Violence, 2015). Arizona is a unique state of analysis, with gun-supportive legislation and policy and heightened rates of DV gun homicide, exploring the how judges come to implement firearm removal policy reveals how gun control becomes employed in a gun rights state.

When filling for an order of protection, petitioners have the option of requesting that a judge prohibit the respondent from possessing, receiving, or purchasing firearms (Ariz. Rev. Stat. 13-3602 section G, clause 4.) Judges can order state level firearm removal during the ex parte (hearing at which only the petitioner attends) if they find the respondent poses a “credible threat to the physical safety of the petitioner” or other parties listed on the protection order (Ariz. Rev. Stat. 13-3602 (G)(4)). At the federal level, judges can enforce the Brady Handgun Violence Prevention Act (1994), which prohibits respondents subject to court orders from owning firearms (18 U.S.C. § 922(g)(8)). Figure 1 provides a flowchart of Arizona’s protection order process, noting



the stages at which firearm removal legislation becomes applicable. Arizona is unique in that a permanent civil protection order may be issued after an ex parte hearing. While ex parte hearings occur elsewhere, Arizona's victim-friendly process provides petitioners with the ability to obtain an order of protection without having to face the respondent in court, as only the petitioner attends.

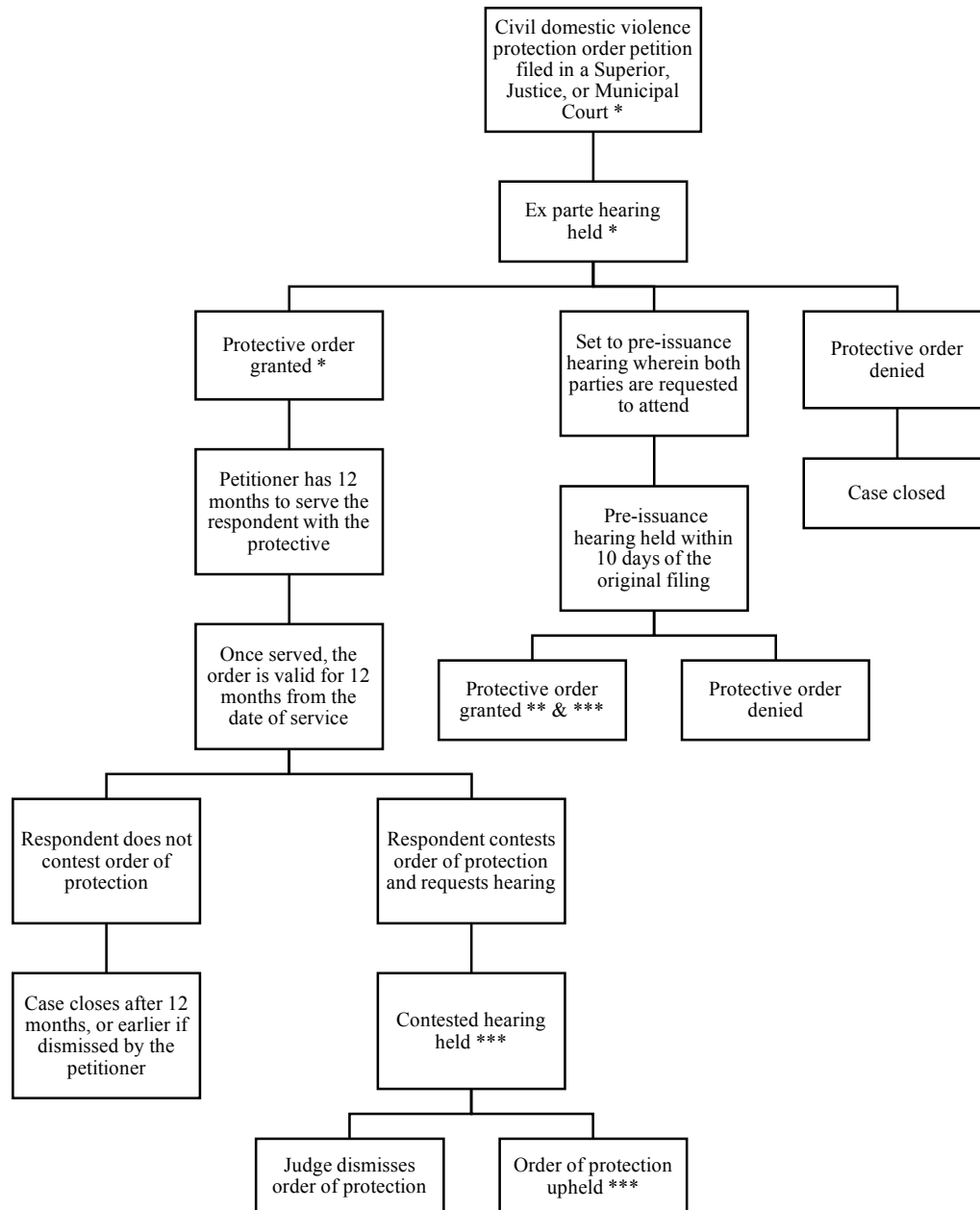
In determining whether to issue or deny a protection order, judges must find "reasonable cause" to believe the respondent has committed, or may commit, an act of DV (Ariz. Rev. Stat. § 13-3602(G)(4)). If the judge feels there is not sufficient evidence to grant the petitioner's request for an order, they can either (1) deny the request, (2) schedule a hearing or (3) request both parties to be present, to determine whether there are grounds for issuance (17B A.R.S. Rules Protect. Ord. Proc., Rule 23). If issued at the ex parte hearing, the order is akin to that of a final protection order and once served, is effective for one year (Ariz. Rev. Stat. § 13-3602(G)(4)).

In Arizona judges have a large degree of judicial discretion in determining whether firearm removal is warranted (DeJong and Burgess-Proctor, 2006), with this decision dependent upon their interpretation of a "credible threat," as determined from the allegations of violence presented by the petitioner. If found, judges can prohibit a respondent from "possessing or purchasing firearms" as they pose a "credible threat to the physical safety of the plaintiff." In determining the makings of a credible threat, judges must navigate competing concerns over gun rights and victim safety as it relates to firearm removal provisions on civil DV protection orders. Prior qualitative research illustrates the complexity of judicial decision-making processes by pointing to evidence

that personal values and beliefs around DV, gun rights, and the courts shape these decisions (Frattaroli and Teret, 2006).

Sorenson (2006) researched public perceptions around protection orders and gun rights and ran a study where women were read a vignette of violence and asked whether they felt it was appropriate to issue a protection order and remove firearms. When women stated they felt it was appropriate to issue a protection order, 95.6% of women also supported the removal of firearms. This finding is the first of its kind to offer insight into larger cultural attitudes and beliefs around firearms and domestic violence by gender. Odds increased when a firearm was displayed or present in the incident, with women supporting removal as a means of preventing future violence and men viewing removal as only warranted when a firearm was used in the incident described (Sorenson, 2006). Whether these findings translate to judicial decision-making must be explored, as judicial decisions around firearm removal significantly impact the lives of petitioners. This information in conjunction with prior (Muller et. al., 2009; Kingsnorth et al., 2013) exploring the impact of plaintiff gender on judicial decision-making, leaves larger questions around whether gender shapes which petitioners receive firearm protection, and which respondents are viewed as guaranteed their right to firearms.

Figure 1. Arizona Ex Parte Protection Order Process and Firearm Removal



\* Petitioner can choose to request firearm removal on the protection order Petition.

\*\* The judge can grant firearm removal (regardless of petitioner request) pursuant to Ariz. Rev. Stat. § 13-3602(G)(4).

\*\*\* Once the federal firearm removal legislative requirements have been met, Brady can apply pursuant to (18 U.S.C. § 922).

This figure was created to illustrate how the ex parte protection order process shapes removal and is intended to provide an overview of the process, highlighting the stages at which petitioners can request firearm removal, and hearings which judges are able to grant state and federal firearm removal. Information from the Arizona Revised Statutes, Title 13, Chapter 36, Section 13-3602(G)(4), 13-3602(G)(5), 13-3602(G)(6), 13-3602(G)(7), 13-3602(G)(8), 13-3602(G)(9), 13-3602(G)(10), 13-3602(G)(11), 13-3602(G)(12), 13-3602(G)(13), 13-3602(G)(14), 13-3602(G)(15), 13-3602(G)(16), 13-3602(G)(17), 13-3602(G)(18), 13-3602(G)(19), 13-3602(G)(20), 13-3602(G)(21), 13-3602(G)(22), 13-3602(G)(23), 13-3602(G)(24), 13-3602(G)(25), 13-3602(G)(26), 13-3602(G)(27), 13-3602(G)(28), 13-3602(G)(29), 13-3602(G)(30), 13-3602(G)(31), 13-3602(G)(32), 13-3602(G)(33), 13-3602(G)(34), 13-3602(G)(35), 13-3602(G)(36), 13-3602(G)(37), 13-3602(G)(38), 13-3602(G)(39), 13-3602(G)(40), 13-3602(G)(41), 13-3602(G)(42), 13-3602(G)(43), 13-3602(G)(44), 13-3602(G)(45), 13-3602(G)(46), 13-3602(G)(47), 13-3602(G)(48), 13-3602(G)(49), 13-3602(G)(50), 13-3602(G)(51), 13-3602(G)(52), 13-3602(G)(53), 13-3602(G)(54), 13-3602(G)(55), 13-3602(G)(56), 13-3602(G)(57), 13-3602(G)(58), 13-3602(G)(59), 13-3602(G)(60), 13-3602(G)(61), 13-3602(G)(62), 13-3602(G)(63), 13-3602(G)(64), 13-3602(G)(65), 13-3602(G)(66), 13-3602(G)(67), 13-3602(G)(68), 13-3602(G)(69), 13-3602(G)(70), 13-3602(G)(71), 13-3602(G)(72), 13-3602(G)(73), 13-3602(G)(74), 13-3602(G)(75), 13-3602(G)(76), 13-3602(G)(77), 13-3602(G)(78), 13-3602(G)(79), 13-3602(G)(80), 13-3602(G)(81), 13-3602(G)(82), 13-3602(G)(83), 13-3602(G)(84), 13-3602(G)(85), 13-3602(G)(86), 13-3602(G)(87), 13-3602(G)(88), 13-3602(G)(89), 13-3602(G)(90), 13-3602(G)(91), 13-3602(G)(92), 13-3602(G)(93), 13-3602(G)(94), 13-3602(G)(95), 13-3602(G)(96), 13-3602(G)(97), 13-3602(G)(98), 13-3602(G)(99), 13-3602(G)(100).

## **Research Questions**

Instructed to err on the side of victim protection (Slocum, 2010), courts are given the discretion to determine when a respondent poses enough of a credible threat to a plaintiff's safety to warrant the removal of firearms. Seeking to add to existing literature, I explore whether the inclusion of firearms on civil DV protection orders leads to a heightened scrutiny as to what constitutes a "credible threat." By doing so, I gain a deeper understanding of the circumstances under which firearm removal legislation is being invoked, highlight how courts navigate competing interests of victim safety and gun rights when it comes to firearm removal legislation on civil DV protection orders.

This thesis uses both qualitative and quantitative data to determine when judges deem firearm removal to be warranted, and the circumstances under which firearms become deemed a credible threat to petitioners requesting protection orders due to DV. While prior studies illustrate the accentuated risk created when firearms intersect with DV, I specifically question how judges interpret credible threat on civil DV firearm removal legislation. Through this mixed-methods approach, I question how the gender of the petitioner and respondent shape firearm removal. Coupled with this, I explore the rate at which petitioner's request firearm removal and judicial decisions to grant firearm removal pursuant to both Ariz. Rev. Stat. § 13-3601, and Brady (18 U.S.C. § 922(g)(8)). Uniquely representative of the competing concerns around victim safety and gun rights, firearm removal provisions on civil DV protection orders are indicative of the point at which firearm rights supersede concerns over victim safety.

## DATA AND METHOD

### **Feminist Methodology**

To question how courts navigate around victim safety and gun rights through firearm removal legislation, I engage with social justice oriented feminist research (Kalsem and Williams, 2010). Specifically, social justice feminism is an "approach to questions of law and policy that address concerns about systemic inequities" (Callahan and Roberts, 1996) which identifies how structures uphold patriarchy and identifies pathways to transformation (Kalsem and Williams, 2010). As a means of illustrating these solutions for change, I offer suggestions for policy makers, judges and victim advocates who are dedicated to ensuring possible loopholes and inequalities are addressed.

Ultimately, I build on Kelly and Radford (1996) and bring to light the everyday process by which the topic of domestic violence and firearms are made sense of in the municipal courts and the response to firearm violence. For those individuals who do access the civil legal system, I explore how firearm removal law becomes constructed and interpreted to uphold system of privilege and patriarchy, and how a victim's relationship to the state and larger structural systems of power shape their ability to gain protection from firearms and domestic violence gun homicide.

### **Mixed Methods**

To best answer the proposed research questions, I utilize both qualitative and quantitative methods. Following David Morgan's (1998) first sequential modeling, the qualitative data analysis around judicial decision-making will be informing the quantitative bivariate analysis for this thesis. Further, from a feminist researcher

perspective, I acknowledge the ability of the qualitative data to reveal the complex cultural attitudes and conceptions around victimization and firearms, while quantitative data illustrates the patterns and trends around firearm removal legislation, quantitative data is powerful when it comes to influencing public policy and social change (Spalter-Roth & Hartmann, 1996). This mixed method thesis analyzes decision-making surrounding firearms and protection orders, questioning how the legal system handles navigates concerns over victim safety and gun rights.

*Language – “Petitioner” and “Respondent.”* To bring attention to the relationship between the civil legal system and firearms, the term victim has been utilized when discussing rates of DV homicide to acknowledge the lives lost to these crimes. This language was chosen and used in these moments to frame domestic violence and firearms as a social issue of concern, and identify victims as individuals deserving of justice and remedies to their victimization (Berns, 2004). In this vein, the language of abuser illustrates the actions taken by those exerting this violence.

Civil DV POs, however, are distinct from criminal charges and therefore using victim and abuser provides an inaccurate representation of the civil system. Rather, petitioner and respondent are used throughout to recognize that all orders of protection are constructed by the petitioner (person filing for an order of protection), all indications of abuse and violence are allegations. Judges are then tasked with determining whether these allegations are credible.

### **Graduate Research Aide**

Having been given the unique opportunity to work as Dr. Alesha Durfee’s Graduate Aide, I assisted in the completion of 20 interviews with police officers,

petitioners, and court personnel. Working amongst fellow graduate research aides, I assisted in the coding and analysis of the 1,388 civil DV protection order case files. Through this position, I became familiar with the civil DV protection order process in Arizona, and gained valuable insights into the civil legal system which aided in the development of my research questions. This invaluable experience instilled a desire to explore how the civil legal system navigates competing interests over victim safety and gun rights, as manifested in firearm removal requests.

## **Data**

This mixed-methods thesis analyzes secondary qualitative and quantitative data collected as part of Dr. Alesha Durfee's National Institute of Justice Researcher-Practitioner Partnerships Grant "Investigating the Impacts of Institutional and Contextual Factors on Protection Order Decision-Making" (Dr. Alesha Durfee, PI; Mesa Municipal Court and National Center for State Courts, co-PIs) (2015-IJ-CX-0013). Permission was given by Dr. Alesha Durfee to analyze three specific questions from her judicial interview schedule and access her quantitative database to conduct a series of bivariate analyses aimed at answering the proposed research questions.

## **Qualitative Data**

Dr. Alesha Durfee conducted 15 semi-structured interviews with Municipal Court Judges. While interviewees are asked a range of questions, only three questions are analyzed in this thesis. Once interview audio was transcribed, I was provided with the responses to the following firearm related questions: 1) What kinds of information need to be present in a protection order petition for you to grant firearm removal? 2) Under what circumstances would removal not be granted when requested? and 3) What impacts

your decision to apply Brady? The judges responding to the third question regarding the application of Brady were unanimous in reciting the statutory requirements; as such these responses were not analyzed. Sixty-seven percent of the judges interviewed are female (n = 10) and 33 percent (n = 5) are male.

*Analytic Technique.* Upon receiving transcripts from Dr. Alesha Durfee, I conducted response level deductive coding to determine how judges came to interpret firearms as posing a credible threat to the physical safety of the petitioners. Given that judges must make a finding of credible threat prior to the removal of firearms, and little is known about how judges come to interpret this statutory language, qualitative interviews provided the best data to answer this question. Each interview was coded for the following eight thematic codes: firearm use, threats, types of violence, requests for removal, perceptions of firearm removal legislation, location of firearms, reasonable fear of firearms, and the judge's gender. The process of theme identification was consistent with Ryan and Bernard's (2003) guidelines and I used deductive coding techniques.

Judicial responses to the qualitative interview questions provided insight into the interpretation of credible threat as it pertains to firearm removal. While some judges explicitly used the language of "credible threat," many included scenarios, examples, and descriptors of violence, which allowed for themes to emerge. The judges interviewed not only begin a conversation around the way in which the legal system invokes firearm surrender legislation, they detailed the circumstances under which this legislation is implemented.

## **Quantitative Data**



The quantitative database contains 1,400 protection order case files filed in 2015 in an urban county in Arizona. Upon meeting all study requirements (both parties over the age of 18, the petition filed in 2015, and no cross-filings); the sample size consisted of 1,388 protection order case filings. The dataset contains variables that capture fields on the court documents, Arizona statutory definitions of abuse, descriptors of violence, hearing outcomes, and demographic information. Further, the quantitative database contains a dichotomous variable capturing when Brady is applied, typically after a contested hearing. I created a variable to reduce the sample based on relationship and hearing requirements set out by the federal government using Stata 12.

### *Dependent Variables*

The three variables included in this analysis are 1) a victim's request for firearm removal, (2) a judge granting firearm removal pursuant to Ariz. Rev. Stat. § 13-3601, and (3) the application of Brady (18 U.S.C. § 922(g)(8)). Judges can order state level firearm removal during the ex parte (hearing at which only the petitioner attends) if they find the respondent poses a "credible threat to the physical safety of the petitioner" or other parties listed on the protection order (Ariz. Rev. Stat. 13-3602 (G)(4)). At the federal level, judges can enforce the Brady Handgun Violence Prevention Act (1994), which prohibits respondents subject to court orders from owning firearms (18 U.S.C. § 922(g)(8)). Arizona's ex parte protection order process severely limits the reach of federal firearm laws, as Brady can only be applied when the respondent has been notified of, and been given the opportunity to attend, a hearing (18 U.S.C. § 922(g)(8)). Figure 1 illustrates Arizona's ex parte protection order process and the stages at which the above firearm removal provisions are applicable.

*Requesting firearm removal.* Petitioners can choose whether to request firearm removal by checking box seven on the Petition for Order of Protection form. In the quantitative dataset, requests for firearm removal were coded as present (1) if box seven was checked on the protection order petition.

*Granting firearm removal.* An order may be issued provided the judge finds “reasonable cause” to believe the respondent has committed, or may commit, an act of DV (Ariz. Rev. Stat. § 13-3602(G)(4)). If the judge feels there is not sufficient evidence to grant the petitioner’s request for an order, they can either (1) deny the request, (2) schedule a hearing or (3) request both parties to be present, to determine whether there are grounds for issuance (17B A.R.S. Rules Protect. Ord. Proc., Rule 23). If issued at the ex parte hearing, the order is akin to that of a final protection order and once served, is effective for one year (Ariz. Rev. Stat. § 13-3602(G)(4)). Pursuant to Arizona State Legislation § 13-3602 section G, clause 4, judges can prohibit a respondent from “possessing or purchasing firearms” if they are found to be a “credible threat to the physical safety of the plaintiff.” In the quantitative dataset, incidences of judges granting firearm removal were captured by a dichotomous variable, being coded as present (1) when judges included firearm removal on the granted order of protection.

*Federal firearm removal.* Section 922(g) of the Brady Handgun Violence Prevention Act (1994) indicates that for federal firearm prohibitions to apply, an individual must be “subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.” Further, the respondent must have been notified of the hearing, giving them an opportunity to attend and participate (18 U.S.C. § 922).

### *Independent Variables*

Independent variables of analysis captured the gender of the petitioner and respondent; the respondent's race and ethnicity; the relationship status between the parties; types of physical abuse such as strangulation, threats to kill, threats with a firearm or weapon; indications of firearm and weapon ownership; and the variable "fear."

Variables capturing the race and ethnicity of the respondent are combined to create:

"White Non-Hispanic," "Black Non-Hispanic," "Asian/Pacific Islander Non-Hispanic,"

"American Indian/Alaska Native Non-Hispanic," and "Hispanic (All Races)." Both

"Asian/Pacific Islander Non-Hispanic," and "American Indian/Alaska Native Non-

Hispanic" were excluded from the bivariate analysis due to low sample size. The original

dichotomous relationship variables were included in the quantitative portion. All

variables were analyzed across all three dependent outcomes to best illustrate and

comment on decision-making.

*Strangulation.* Within the petition both choking and strangulation were captured by this variable. Strangulation, though a form of physical abuse, is specifically captured here given the extreme risk. Glass et. al. (2008) found that a strangulation occurring more likely amongst homicide victims than abused women, "abused" being used to capture those who had been physically assaulted or threatened with a weapon by an intimate partner (Glass et. al., 2008). Women who have experienced strangulation are at increased (7-fold) risk of becoming a victim of homicide or attempted homicide (Glass et. al., 2008). Strangulation is expected to be associated with a judge granting firearm removal, as a respondent has shown propensity to harm, and firearms continue to be the primary

means of killing intimate partners. Finally, Vittes and Soresnson (2006) found a relationship between mentioning both firearms and strangulation in protective orders.

*Threats.* When looking at threats, this thesis specified threats to kill the petitioner, the respondent threatening to kill themselves, and threatening the petitioner with a firearm. When presented with threats to kill the petitioner, prior work revealed that (Vittes and Sorenson, 2006) judges are more likely to order firearm removal. When looking at batterers' use of guns to threaten their partners, Rothman et. al. (2005) found that 5% (n=35) of these men had also attempted suicide. Further, the Arizona Coalition Against Domestic Violence (2015) found that of the 107 domestic violence gun homicides, reported to the media, in Arizona, 26% were domestic violence murder suicides. Finally, Tjaden and Thoennes (2000) note that nearly 1 in 30 women (3.5%) report having been threatened with a firearm by an intimate partner, with studies consistently illustrating the heightened risk associated with these incidences.

#### *Analytic Technique*

Data was analyzed by performing a series of chi-square analyses to explore the relationship between each independent variable (case characteristic) and the resultant dependent outcome – the petitioner's decision to request firearm removal (Table 2), a judge's decision to grant removal pursuant to state legislation (Table 3), and the application of federal firearm removal legislation (Table 4). Further, as all variables are nominal, chi-square analyses are the most appropriate significance test, with Cramer's V illustrating the strength of the association.

## RESULTS

### **Brief Overview**

Analysis from the qualitative and quantitative dataset reveal that decisions around firearms and DV exhibit a deal of variation and discretion when it comes to firearm removal. The qualitative analysis reveals that not all firearms are deemed by judges to be a “credible threat”, and not every respondent’s use of firearms is viewed as equally concerning. Quantitative analysis builds upon the characterization of credible threat identified in the judicial interview responses and investigates the rate at which petitioners request firearm removal, and the rate at which judges grant removal at the state and federal level. Additionally, chi-square analyses are performed to explore which factors are associated with a judge granting firearm removal pursuant to state legislation, with attention to gender.

### **Qualitative interviews**

For the 15 Municipal Court Judges interviewed, three themes emerged around their interpretation of credible threat as it relates to firearm removal: 1) respondents’ right to firearms, 2) firearm abuse, and 3) fear of firearms. In exploring how the courts navigate competing concerns around victim safety and gun rights, the three themes synthesize the decision-making process around firearm removal, as identified by the judges.

### **Respondents’ Right to Firearms**

In noting which factors were needed to find “credible threat” sufficient for firearm removal, judges continuously spoke to the behavior, motive, and rights of the respondent. Judges audibly grappled with tensions over the respondent’s right to own a firearm and

their duty to err on the side of victim protection (Slocum, 2010). Judges frequently identified mitigating behaviors leading judges to uphold a respondent's right to own firearms, as opposed to invoking removal legislation. A respondent owning a firearm was not deemed sufficient for firearm removal for the majority of the judges. Petitioners must not only illustrate their need for an order of protection but demonstrate the respondent's alleged intention to do harm with a firearm. Intention to do harm, however, was viewed as improbable if a firearm was kept in a safe outside of the home. The following scenario illustrates the differentiations made by Judge J, who views one's ability to own a firearm dependent upon the location of the firearm and credible access to a firearm.

A petitioner says, 'Judge I'd like you to prohibit him from possessing any firearms.' Does he possess any? 'He has a shotgun.' Is the shotgun in the home? 'No, it's at his dad's house.' Oh, well have you seen him... 'Well, he goes hunting with his dad every October.' Have you ever seen him use it any other time? 'No, I've never seen...' So, this person may think, 'well, he has access,' but not in a way that would show they're a credible threat to the physical safety of the person. Has he ever threatened you with a firearm? Has he ever threatened to shoot you? Has he ever made a hand gesture with his fingers like a pistol? You know, you go through all those things.

What entails a credible firearm threat for Judge J is not only whether one has immediate access to a firearm, but also whether a respondent has exhibited behavior which would lead one to believe that they will use firearms against the petitioner. While the petitioner in the above scenario requests the judge to prohibit the respondent from owning their firearms, judges pose a series of questions designed to ascertain whether or

not the respondent's right to bear arms has been compromised. Judges were consistent in identifying a request for removal as illustrative of a desire for this action, while simultaneously noting that a request is not sufficient for removal. Petitioners who are aware the respondent owns a firearm, request removal from the court, and allege that the respondent uses the firearm as a means of violence are more likely to have their requests for firearm removal granted. Amongst the judicial responses, it is exceedingly clear that a respondent owning a firearm does not lead a judge to believe that the respondent poses a credible threat to the safety of the petitioner. Judge O shares two scenarios, illuminating the divide between firearm ownership and firearm abuse.

[. . .] she [petitioner] says "Yeah, he has weapons he goes hunting once a year and they're in the safe in the garage." I wouldn't prohibit him from owning firearms. But if she says, "Yeah, he has a gun and every time I won't make him what he wants for dinner, he takes it out and cleans it on the kitchen table." I'd probably...so I have to. I have to. I know what the state is as far as how they value firearms rights, and I am very concerned about firearms in the hands of DV offender, but I'm also not going to take away a gun just because someone has it.

In this scenario, Judge O's propensity to grant firearm removal is dependent upon an indication of firearm abuse. Though the example does not provide explicit threats of firearm violence, it demonstrates the symbolic dangerousness of firearms. For judges, a respondent's right to own a firearm was not impeded simply because an order of protection had been issued against them, with this finding being consistent across the judges interviewed. A respondent using a firearm as a part of their violence and control shifted their firearm ownership from a right, to a credible threat.

## **Firearm Abuse**

While judges were nearly unanimous in noting that allegations of physical violence are insufficient findings of a “credible threat to the physical safety of the petitioner” (Ariz. Rev. Stat. 13-3602 (G)(4)), firearm abuse is consistently identified as warranting firearm removal. As noted in Judge O’s scenario, the moment a respondent uses a firearm as a means of exerting violence over another, one’s right to bear arms is hindered. Firearm abuse, termed here, refers to threats with a firearm, threats to kill, and a firearm being involved in the violence. Expanding upon this definition, Judge N’s characterizes credible threat as “threats with a weapon, to use a weapon, to kill somebody, to kill children, to kill dogs or animals.” Firearm abuse need not be this explicit, however. For Judge H, symbolic or verbal threats to kill, such as hand gestures indicating “I’m going to shoot you” constitute a credible threat symbolizing the intent to use a firearm.

Other judges were more explicit in the examples provided, illustrating that petitioners who allege the respondent threatened to kill them by stating, “I could just kill you and get away with it,” (Judge L) “I’m going to kill you,” (Judge A) or “He threatened to shoot me” (Judge K) are more likely to have their requests for firearm removal granted, as these explicit threats are taken to be credible by the judges and illustrative of firearm abuse.

Judge I shares a recent court case wherein firearm abuse was alleged and firearm removal was granted.

“...I had one recently where she wrote that she was holding her baby, and he stood over her with the gun to his head, indicating that he would kill himself. I didn’t



even really ask any questions I just ordered that he, within 24 hours, turn over all firearms to [town redacted] P.D."

The respondent's use of a firearm to threaten their own life was tangible and deemed credible by Judge I. A focus on firearm abuse centers the safety of petitioners by illustrating a need for firearm removal. A respondent's propensity to threaten to kill or threaten with a firearm consistently became identified as sufficient for firearm removal. In navigating petitioner safety and the respondent's right to a firearm, firearm abuse played heavily in impacting judicial decisions to prohibit firearms from a respondent. While respondents with access to a firearm pose a risk to petitioners, they are not universally viewed as posing a credible threat to their physical safety. Beyond illustrating a respondent's intent to do harm, petitioners success in having their request for firearm removal met may lie in their ability to convey a fear of firearms.

### **Fear of Firearms**

For petitioners who request firearm removal, their ability to demonstrate a "genuine" fear of firearms may increase the likelihood that their requests for removal will be granted, though not all judges deem this sufficient. Consistent with Lucken et al.'s (2014) findings, owning a firearm or having access to one did not universally indicate the firearm was dangerous. When discussing fear, judges linked it to an explicit fear of firearms. Four female judges placed importance on a petitioner's fear of firearms; it is important to note for these judges, fears around firearms varied but centered around the dangerous potential of firearms and the petitioners being "genuinely afraid." All judges included in this study agreed that petitioner requests for firearm removal are indicative of a general fear around firearms. For many, a petitioner expressing their fear within the PO

petition impacted their decision to grant the removal of firearms, even more so than a petitioner having requested removal.

Even when requested, fear must be indicated in some capacity. Judge C makes it clear that in order to issue firearm removal she must “believe that she [the petitioner] has a reasonable fear that he's [the respondent] gonna get a firearm.” Fear of future firearm purchase is sufficient to issue firearm removal in Judge C’s case whereas Judge O illustrates the competing concerns around a petitioner’s sense of fear or safety and the respondent’s right to possess firearms. Judge O states that when petitioners request firearm removal they are often “genuinely afraid,” a finding that leads her to feel firearms pose a credible threat.

While only four judges discussed a fear of firearms as important to their decision-making, not all statements of fear were deemed equally credible. Dr. Alesha Durfee’s interview findings show that perceptions of firearm risk vary by the type of gun present, and judges are resistant to the notion that firearm ownership alone is sufficient for removal. The variation found amongst this group of judges in relationship to the theme of fear is further illustrated by Judge K, who grants firearm removal if presented with statements such as, “. . . he has 20 shotguns and I just don't feel safe because he has access to these and has threatened me before.” As illustrated by this example, a petitioner simply being afraid of firearms is not sufficient for firearm removal unless coupled with threats or abuse with a firearm. Shotguns and hunting rifles are not viewed as equally dangerous to all judges interviewed, and disparities emerge over when judges feel firearms have reached a threshold of dangerousness, with few feeling firearms alone pose

a credible threat. The diverging perceptions around firearm risk expressed work to illustrate the complexity of judicial decision-making.

### **Quantitative Data**

Judicial interview responses illuminate the way in which credible threat around firearm removal comes to be interpreted and implemented in the civil legal system. Credible threat, as discussed above, does not include forms of physical, emotional or mental violence. To be deemed sufficient for firearm removal, petitioner allegations must demonstrate a respondent's reduced right to own a firearm due to firearm abuse and firearm fear. Judicial decision-making is highly discretionary, and these three themes work to highlight further areas of analysis. A total of 1,388 protection order case files from Dr. Alesha Durfee's quantitative database undergo analysis to question the circumstances under which firearm removal occurs in Arizona. Including indicators of credible threat, as identified in the interviews, a series of chi-square analyses question the predictability of legal (abuse allegations) and extralegal factors (gender, relationship, and respondent race/ethnicity) on a judge's decision to grant firearm removal. Importantly, bivariate tests allow for a discussion around the independent association between each variable and the outcome (firearm removal). Chi-squares are unable to account for other variables and are not comparative across categories, though they offer insight into the relationship between the two factors. For example, in discussions around the petitioner and respondent's relationship and firearm removal, findings are not compared across all relationships listed, but are merely illustrating whether there is a relationship between a judge granting firearm removal and whether the parties are married or not married. Table

1 presents an overview of the rates of request and issuance of firearm removal provisions within the study.

Table 1

Univariate Analyses of Civil Domestic Violence Protection Order Case Filing Characteristics (n= 1,388).

Outcome	Frequency	%
Requested Firearm Removal	673	48.5
Protection Order Issued	1,175	84.7
Of Orders Issued, Requested Firearm Removal	581	49.5
Of Requested and Issued, Removal Granted	293	50.4
Of Orders Issued, Judge Granted Firearm Removal	369	31.4
Met Legislative Brady Requirements	224	19.1
Of Those Meeting Requirements, Brady Applied	35	15.6

Nearly half (48.5%) of all petitioners requested firearm removal when filing for an order of protection, and 49.5 percent of petitioners requested removal and received an issued order or protection. For the 581 petitioners who requested firearm removal, approximately 50.4 percent had this request granted, and judges granted firearm removal on 31.4 percent of the protection orders they issued, whether it had been requested by a petitioner or not. Federal firearm removal only covers intimate partners and requires a hearing to be held, at which both parties are present. Given these restrictive criteria, only 224 (19.1%) cases in the database meet the federal requirements for firearm removal. Of these 224 qualifying cases, only 15.6 percent (n= 35) ultimately result in the application of federal firearm removal (Brady).

The percentages presented illustrate the disparity between petitioner requests for firearm removal and judicial decisions to grant this relief. Further, the limited reach of federal firearm law is an area of concern and highlights an unintended consequence of

Arizona's ex parte protection order process. To understand how firearms shape the judicial-decision making process, a series of bivariate chi-square tests are performed. The chi-square analyses explore the association between each independent variable (legal and extralegal factors) and a judge's decision to grant removal pursuant to state legislation (Table 2).

### **Judicial Decision-Making: Judges Granting State-Level Firearm Removal**

Judicial interview responses illustrated the complexity around decision-making and firearm removal. This qualitative data is crucial to larger conversations around firearms and decision-making, as the law as written often looks very different than the law in action. The quantitative analysis tests these responses and illustrates which factors hold a statistically significantly relationship to the granting of firearm removal at the state level. Having gained insight into the factors shaping a judge's perception of credible threat, Table 2 reports the rate at which judges granted firearm removal on issued orders of protection.

While not all petitioners seek firearm removal, a statistically significant relationship exists between a petitioner requesting firearm removal and the issuance of this relief (chi-square (1) = 193.13,  $p = 0.000$ ). Notably, petitioners have a nearly equal chance of having a request granted or denied, Table 2 explores the factors associated with this disparity.

Table 2.

Chi Square Test of Characteristics Associated with Judicial Decision-Making and Granting Firearm Removal/Relief (n = 369).

Variables	Judge grants firearm removal	Predictive Direction (Increase/ Decrease)	<i>p</i> value
Overall	31.40%		
Petitioner Requests Firearm Removal	293 (50.4%)	Increase	0.000
Gender of the Petitioner			
Female	314 (33.5%)	Increase	0.002
Male	55 (23.2%)	Decrease	
Gender of the Respondent			
Female	51 (20.9%)	Decrease	0.000
Male	318 (34.2%)	Increase	
Respondent 's Race/Ethnicity			
White NH <sup>1</sup>	202 (31%)		0.758
Black NH	57 (33.1%)		0.596
Hispanic (All Races)	93 (31.9%)		0.850
Petitioner and Respondent Relationship			
Married (Now/In Past)	86 (38.7%)	Increase	0.009
Live Together (Now/In Past)	156 (28.6%)		0.056
Child in Common	65 (33.3%)		0.525
Pregnant	5 (27.8%)		0.738
Related	51 (26%)		0.075
Romantic or Sexual Relationship	238 (68.8%)	Increase	0.928
Abuse Allegations			
Strangulation	45 (39.5%)		0.051
Threatened to Kill Petitioner	95 (53.4%)	Increase	0.000
Threatened to Kill Self	29 (52.7%)	Increase	0.000
Threatened Petitioner with Gun	36 (76.6%)	Increase	0.000
Allegations of Respondent Behavior			
Gun Ownership	74 (60.2%)	Increase	0.000
“Fearful” of Respondent	147 (36.5%)	Increase	0.007
<sup>1</sup> Non-Hispanic (NH)			

As indicated as proxies for credible threat in the qualitative judicial interviews, threats, firearm ownership and a fear of firearms are associated with an increased probability of judges granting firearm removal. In the 369 cases in which judges granted

this relief, 95 (53.4%) petitioners alleged that respondents threaten to kill the them (chi-square (1) = 46.99,  $p = 0.000$ ), and 29 (52.7%) petitioners alleged that the respondents threaten to kill themselves (chi-square (1) = 12.18,  $p = 0.000$ ). Further, a petitioner including an allegation of threats with a firearm significantly predicted an increase in the predictability that a judge will grant firearm removal (chi-square (1) = 46.41,  $p = 0.000$ ), with 74 respondents in the 369 cases owning a firearm (chi-square (1) = 52.74,  $p = 0.000$ ). In examining the factors associated with firearm removal, it is important to note that while allegations of threats to kill the petitioner, threats to kill oneself, and threats with a firearm contribute to a legal finding of credible threat, as discussed in the qualitative interviews, other significant factors emerge. Specifically, female petitioners, male respondents, and the petitioner and respondent being married are statistically significant factors associated with a judge granting firearm removal, though these are not associated with findings of “credible threat”.

Independent of all other variables, 61 percentage of petitioners and respondents who are currently or formerly married did not receive firearm removal, with the association between having been married and a judge’s decision around firearm removal significantly associated (chi-square (1) = 6.84,  $p \leq 0.01$ ). Of particular interest is the relationship between gender and firearm removal, judges grant firearm removal at a higher than expected percentage when the petitioner is female (33.5%), as compared to male (23.3%). Further, the relationship between firearm removal and the gender of the respondent is statistically significant. The respondent being female is predictive of lower than expected rates of judges granting firearm removal, but the respondent being male is associated with higher than expected rates of removal. The following tables explore the

gendered dynamics between the petitioner and respondent to determine the influence of gender on firearm removal and question how conceptions of masculinity and firearm ownership shape these constructions.

### **Petitioner Gender**

Given that the gender of the petitioner and respondent are statistically significant in shaping a judge's decision to grant firearm removal, Table 3 and Table 4 explore the variations in judicial decision-making between male and female petitioners. This analysis allows for a nuanced exploration into the independent relationship between gender and firearm removal legislation. In the 1,388 protection order case files, female petitioners are more likely than male petitioners (50.3% vs 46%) to request firearm removal, and requests are more common when the respondent is male (50.7% vs 44.7%). These findings are consistent with prior research which finds that female victims of DV are at a heightened risk when male respondents have access to firearms (Campbell et al., 2003). For both male and female petitioners, requesting firearm removal is associated with a larger than expected rate of judges granting removal, at the state level. Further, Table 3 and 4 break down decision-making by the gender of the petitioner and questions whether judges within the quantitative dataset granted firearm removal in conjunction with the qualitative definition of credible threat and which factors are predictive of firearm removal.

*Male Petitioners.* A total of 369 petitioners had judges grant firearm removal, and 55 of these petitioners are male. Table 3 provides a detailed look at the relationship between a judge's decision to grant firearm removal and demographic and abuse characteristics alleged by these male petitioners. Requesting firearm removal, allegations



of severe forms of violence, and the respondent's gender are all significant predictors of a judge granting firearm removal. Though the respondent's gender factors in, the respondent's race or relationship to the petitioner does not.

Prior literature has not explored the dynamics present between male petitioners and firearm removal. Table 3 begins to illustrate the various characteristics, if indicated in the protection order petition, are associated with an increased likelihood of a judge granting firearm removal. Due to the reduced sample size of male petitioners, both allegations of strangulation and the respondent threatening to kill themselves were excluded. When the petitioner alleged that the respondent had either threatened to kill the petitioner himself, or threatened him with a gun, judges are expected to grant firearm removal more frequently. This finding is consistent with the qualitative findings which illustrate that allegations of severe abuse are taken as indicators of "credible threat," with the expectation being that when present, these factors shape firearm removal for both male and female petitioners.

Taken independently of all other factors, there is an additional association between a judge granting firearm removal and a male petitioner included an indication of fear on their protection order petition. Prior studies (Durfee, 2011) have illustrated that male petitioners are less likely to frame their need for an order of protection around discussions of fear, yet, this data illustrates that firearms may work to reshape this framing. While bivariate analyses are limited in their capacity, and can only reveal the relationship between firearm removal and the inclusion of fear, further investigation should occur to fully explore how firearm fears are framed and discussed based on the gender of the petitioner.

Table 3.

Chi Square Test of Characteristics Associated with Judicial Decision-Making and Granting Firearm Removal for Male Petitioners (n = 55).

Variables	Judge grants firearm removal	Increase/ Decrease Granting Removal	<i>p</i> value
Overall	14.91%		
Victim Requests Firearm Removal	34.86%	Increase	0.000
Gender of the Respondent			
Female	17.02%	Increase	0.006
Male	32.29%	Increase	
Respondent's Race/Ethnicity			
White NH <sup>1</sup>	24.82%		0.475
Black NH	17.14%		0.357
Hispanic (All Races)	25.53%		0.673
Petitioner and Respondent Relationship			
Married (Now/In Past)	17.86%		0.475
Live Together (Now/In Past)	21.77%		0.584
Child in Common	27.27%		0.635
Pregnant	0.00%		
Related	28.57%		0.239
Romantic or Sexual	22.64%		0.912
Abuse Allegations			
Threatened to Kill	62.07%	Increase	0.000
Petitioner			
Threatened Victim with	77.78%	Increase	0.000
Gun			
Allegations of Respondent Behavior			
Gun Ownership	68.75%	Increase	0.000
“Fearful” of Respondent	25.00%	Increase	0.010
<sup>1</sup> Non-Hispanic (NH)			

*Female Petitioners.* For female petitioners, unique patterns of significance emerge, not found with male petitioners. 314 female petitioners were granted firearm removal, with Table 4 illustrating the variation in this implementation. Interestingly,

while the gender of the respondent proved significant when looking at male petitioners, this effect is not noticed amongst females. While female petitioners receive the majority of firearm removal relief in the sample, it is notable that the gender of the petitioner is a stronger indicator of this relief than the respondent's gender. Whether the request for firearm removal is being taken out against a male or female has no association with a judge's decision to grant this relief, rather, the petitioner being female is a stronger factor shaping this decision.

As noted above, information regarding the respondent is not related to receiving firearm removal, and there is no statistically significant association between the race or gender of a respondent either. When looking at the relationship between the female petitioner and respondent, a woman being married to the respondent, as opposed to not, is related to judicial decision-making around firearm removal. The predictability of a judge granting removal being 41.75 percent if the female petitioner and respondent are married. Additionally, a woman being related to a respondent is predictive of a judge's decision to grant firearm removal, with the predictability being 24.81 percent if they are related.

The overall rate of female petitioners receiving firearm removal is 85.09 percent, with each independent variable failing to predict this level of firearm removal. This data illustrates that not only are female petitioners more likely to receive this relief, individual factors are less significant than the gender of the petitioner, as compared to male petitioners. Though no individual variable is as highly predictive as one's gender, allegations of threats to kill the petitioner, threats to kill oneself, threats with a firearm, owning a firearm, and indications of fear are associated with judicial decision-making around firearm removal. Further exploration is needed to examine the overt impact of the

gender of female petitioners on the decision to grant firearm removal. Additionally, as with male petitioners, further investigation into the way in which female petitioners frame their fear of firearms is crucial. Not only do judges in the qualitative results indicate that fear around firearms factors into their decision-making, the quantitative results illustrate this impact. As fear has proven significant for both male and female petitioners, exploring the way in which this fear illustrates the need for firearm removal is vital to understanding the fear and risk firearms pose to petitioners.

Female petitioners are known to be at a heightened risk when seeking an order of protection (Messing et al., 2014) and requesting firearm removal (Frattaroli and Teret, 2006). This data illustrates that female petitioners are the primary recipients of firearm removal relief, which may speak to prior data pointing to this risk, and need for protection. Additionally, the findings that being female have a more predictive impact than allegations of abuse is consistent with prior work (Muller et. al., 2009; Kingsnorth et al., 2013). In relationship to firearm removal requests and relief, further exploration must be undergone to examine the unique motivations between both male and female petitioners for seeking firearm removal through civil DV POs. Further, an examination of the ways in which firearms become framed and alleged within PO petitions will offer insight into the varying ways in which firearm fears come to be discussed and whether these findings are consistent with stereotypical and gendered images of victimization (Durfee, 2010).

Table 4.

Chi Square Test of Characteristics Associated with Judicial Decision-Making and Granting Firearm Removal for Female Petitioners (n = 314).

Variables	Judge grants firearm removal	Increase/ Decrease Granting Removal	<i>p</i> value
Overall	85.09%		
Victim Requests Firearm Removal	54.03%	Decrease	0.000
Gender of the Respondent			
Female	26.21%		0.098
Male	34.37%		
Respondent's Race/Ethnicity			
White NH <sup>1</sup>	32.75%		0.605
Black NH	37.23%		0.314
Hispanic (All Races)	33.06%		0.873
Petitioner and Respondent Relationship			
Married (Now/In Past)	41.75%	Decrease	0.006
Live Together (Now/In Past)	30.64%		0.097
Child in Common	34.10%		0.846
Pregnant	27.78%		0.605
Related	24.81%	Decrease	0.022
Romantic or Sexual	32.76%		0.756
Abuse Allegations			
Strangulation	40.20%		0.128
Threatened to Kill	51.68%	Decrease	0.000
Petitioner			
Threatened to Kill Self	52.08%	Decrease	0.005
Threatened Victim with	76.32%	Decrease	0.000
Gun			
Allegations of Respondent Behavior			
Gun Ownership	58.88%	Decrease	0.000
“Fearful” of Respondent	38.81%	Decrease	0.010

<sup>1</sup> Non-Hispanic (NH)

## DISCUSSION

Firearms in situations of domestic violence pose a potentially lethal threat. This research adds to conversations around firearms and DV and illustrates the need to prioritize victim safety over gun rights. Civil DV POs function to as a mechanism of gun control, by limiting a respondent's ability to possess firearms (Dugan, 2003; Keilitz, 1994; Eigenberg et. al, 2003). While it is known that some petitioners abstain from firearm removal requests in the interest of their safety and well-being (Wintemute et al., 2015; Vittes et al., 2013; Frattaroli and Teret, 2006), nearly half (49.5%) of all petitioners in this study requested firearm removal. Prior research illustrates that petitioners seeking an order of protection are at a heightened risk of violence (Carlson et al., 1999; Harrell and Smith 1996; Campbell et al., 2003), with seeking firearm removal increasing their risk of homicide (Messing et al., 2014). Petitioners are requesting firearm removal, despite the potential risks involved, making it imperative for the civil legal system to be attentive to these requests.

The primary means through which judges come to determine whether firearm removal is warranted is through a finding of "credible threat." Adding to existing literature, this analysis reveals that judges differentiate between firearm ownership and firearm abuse, the latter warranting removal, while the former is deeply entrenched by beliefs around the right to bear arms. Respondent's use and ownership of firearms should be viewed as posing a credible threat to victim safety, though the judicial responses reveal that this is often not the case. Quantitative data reveals that, consistent with qualitative responses, judges often place a high importance on severe forms of violence

when considering firearm removal. Firearms in the hands of those with active orders of protection are dangerous and concerning, given that firearms are the primary weapon in female DV homicides in Arizona (Arizona Coalition to End Sexual and Domestic Violence, 2015).

Courts are often credited as erring on the side of victim safety (Slocum, 2010), yet firearms impact this reputation. As Lucken (2014) found, firearm ownership introduces competing concerns for judges. Rather than primarily ruling in favor of the plaintiff's safety, judges factor in concerns over unduly restricting a respondent's ability to own firearms. Yet, owning a firearm is proven to be a significant risk factor in intimate partner homicide, though judges rarely find ownership alone to warrant firearm removal. The nuanced picture of firearm ownership illustrated by the judges in the qualitative interviews clearly highlights the point at which judges deem a firearm to be a "credible threat" to plaintiff safety. Arguably though, firearms are a threat to the safety of plaintiffs, as the existence of a gun in a situation of DV increases the likelihood of future assault (Catalano, 2013; McFarlane et al., 1998; Saltzman et al., 1992), threats with a gun (Rothman et al., 2005) and homicide (Glass et al., 2008; Campbell et al., 2003). While petitioners may not explicitly detail a threat to kill, guns have a very lethal potential, especially after a protection order has been issued (Frattaroli and Teret, 2006). In making determinations of "credible threat" judges are not only failing to remove firearms and provide protection for plaintiffs, they are upholding a respondent's right to freely own and access firearms and engage in potential future abuse.

The right to bear arms in the United States has been intimately linked to notions of masculinity and whiteness (Lipstiz, 1998), with the Second Amendment upholding

patriarchal values rooted in the oppression of people of color (Cramer, 1993). In exploring the impact of gender and firearm removal provisions, this data reveals that there exists a statistically significant relationship between firearm removal and the gender of the petitioner and respondent. Notably, male petitioners are more likely to have firearm removal requests granted, as opposed to female petitioners. After further isolating the impact of gender it became clear that a male plaintiff seeking an order against a male respondent was predictive of a judge granting firearm removal, as was a female petitioner that was married or related to the respondent. These findings are significant as the majority of requests for firearm removal are presented by female petitioners against male respondents. This data reveals that despite these numbers, male petitioners are more likely to be granted firearm removal.

### **Ex-Parte Loophole**

Of the full 1,175 issued protection orders in the quantitative database only 19.1 percent met the federal firearm requirements for Brady. Notably, only 224 cases had the opportunity for federal firearm removal to apply. However, only 35 (15.6 percent) of those 224 cases resulted in the application of federal firearm removal (Brady). In these 35 cases, 31 petitioners are female (18.1%) and 4 respondents are females (6.7%). With only 2.5 percent of the quantitative database subject to federal firearm removal, it is evident that the reach of the federal government is highly limited due to the ex parte protection order process.

This unintended consequence of Arizona's ex parte process necessitates that firearm removal be taken seriously at the ex parte hearing. Specifically, judicial decisions to grant firearm removal pursuant to Arizona State Legislation § 13-3602 section G,



clause 4 are of vital importance. Most petitioners in Arizona will never be safeguarded by federal firearm laws, as 80.9 percent of issued protection orders do not meet the federal guidelines, leaving petitioners reliant on the decisions made in the ex parte hearing. Further, for those petitioners whose cases proceed to a contested hearing and are subject to federal firearm laws, prior court action is significantly related to the application of Brady.

Consistent with prior data, firearm removal occurs once respondents have proven themselves to be irresponsible firearm owners. The potential occurrence of harm to the respondent supersedes these situations and clearly illustrates that the implementation of firearm removal law applies to individuals who have no longer been deemed responsible firearm owners.

### **Limitations**

A limitation of this study is that, while the protective order case files contained court forms and documentation, they did not contain audio or bench notes. In their discussion of petitioners who “just check boxes,” judges alluded to the fact that many petitioners do not request removal, even when it is needed. During the hearing, judges ask a series of questions and verbally amend the requests for relief, if appropriate. Having the audio from this ex parte hearing would allow for a potentially more accurate representation of the rate at which petitioners request firearm removal. Further, as it relates to contested hearings and the application of Brady, the inability to know what was discussed limits the discussion around the contextualization of factors impacting one’s decision to apply Brady. Future research should explore how hearings shape and alter the protection order petition as it pertains to requests for firearm removal, exploring both

how petitioners are deemed to have non-credible requests for removal, and how those who do not seek this relief on their petition deal with judges determining this request is needed.

## IMPLICATIONS FOR JUDGES, ADVOCATES, AND POLICY

### **Judges**

Afforded a great deal of judicial discretion, judges in Arizona hold the power to determine which cases warrant firearm removal. The safety of victims should be prioritized over the security of gun rights, with petitioner requests for removal being taken seriously because the implications of inaction may be grave. This data reveals that firearm ownership and access are deemed less credible than acts of firearm violence. However, studies and the domestic violence gun homicide rates in Arizona consistently illustrate the very credible threat posed by potential firearm abuse, purchase and violence.

### **Advocates**

Dedicated to ensuring the safety of victims within the state of Arizona, advocates should promote gun laws which limit a respondent's access to firearms. Additionally, advocates can utilize the data presented as a way to gain an understanding into the judicial decision-making process around the implementation of firearm removal legislation in Arizona. Petitioners seeking removal should be made aware of the narrow interrelation of "credible threat," which allows respondent's access to firearms in the absence of explicit firearm abuse or firearm fears.

### **Policy**

Policy makers are implored to carefully explore how the ex parte protection order process shapes and limits the reach of federal firearm removal legislation, working

toward closing the ex parte loophole. While the ex parte protection order process provides petitioners an expedited and safe way to obtain a protection order, it also severely limits the rate at the Brady Handgun Violence Prevention Act (1994) can be implemented. The limitations placed on the reach of the federal firearm laws in Arizona are particularly concerning, and when looking at firearm removal and DV, it places the burden of protecting petitioners on judges at the state level. Specifically, with only 19 percent of cases meeting the requirements for Brady, firearm removal will solely be determined at the state level.

## CONCLUSION

The rates of DV are staggering with 1 in 4 women, and 1 in 7 men, thus accounting for a total of 804,048 women and 453,689 men in Arizona experiencing DV in their lifetime (Arizona Coalition to End Sexual and Domestic Violence, 2015). Firearms pose a heightened risk when coupled with DV, with firearms being the cause of 67% of Arizona's DV related fatalities in 2015 (Arizona Coalition to End Sexual and Domestic Violence, 2015). When threatened with a firearm, women are 20 times more likely to be murdered (Campbell et. al., 2003). Arizona's virtually non-existent gun laws allow nearly anyone to purchase, possess, and carry a firearm with no permit, license, or registration required (Ariz. Rev. Stat. §13-3101). Arizona is arguably one of the most dangerous states for victims of DV.

Conversations around the intersection of DV and firearms have been limited in their capacity to analyze the relationship between judicial decision-making and firearm removal provisions. By analyzing the circumstances under which firearms, and firearm abuse, are deemed sufficient to warrant removal, this data illustrates when petitioners are deemed worthy of protecting and when firearms are respondents are deemed a "credible threat". Judicial actors hold significant power over one's safety, with the implications of one's decision to grant or deny firearm removal potentially placing individuals at risk of gun homicide.

Judicial interviews and PO case files indicate that judicial decision-making around firearm removal is a complex process, shaped by the petitioner and respondent gender. Most importantly, the data points out the need to re-evaluate the ex parte protection order process and to question how the limited capacity of federal firearm

provisions potentially places victims at risk of harm. Judges at the state level should hear the concerns of petitioners and recognize the danger posed by firearm ownership and access, even in the absence of firearm abuse. Statistically, judicial decision-making did err on the side of the petitioner's safety, granting removal when both firearm access and abuse were alleged, though the qualitative nuances to firearm ownership suggest future areas of exploration. Future work should explore how petitioners allege firearm abuse, and explore the ways in which petitioners discuss and construct their fears of firearms.

The ability to limit a respondent's access to firearms is a crucial provision on orders of protection, but competing conceptions around firearms and victim safety shape the implementation of this provision. The lethal combination of DV and firearms should not be kept hidden. Victims of DV are at an increased risk of firearm violence. More can be done and judges must begin to recognize the risk posed by firearms, and view access and ownership as credible threats to plaintiff safety. Further, Arizona should take measures to strengthen firearm laws and examine the unintended consequences of the ex parte protection order process on federal firearm removal laws, as doing so has the potential to reduce rates of DV gun homicide (Vigdor and Mercy, 2003; 2006; Zeoli and Webster, 2010). Rather than being the "Best State for Gun Owners" (Wood, 2015), Arizona must strive toward becoming a safer state for victims of DV and demonstrate that individuals' lives are more valuable than gun rights.

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